IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 256 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NADIRKHAN MOHAMMEDKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR SOEB R BHOHARIA for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 06/07/2000

ORAL JUDGEMENT

#. Heard the learned advocate Mr.M.M.Shaikh on behalf of the petitioner.

#. Rule. Learned APP Mr.S.S.Patel waives service.

#. The petitioner has challenged the legality, validity

and propriety of the order dated 11.4.2000 passed by the learned 2nd Joint Judicial Magistrate, First Class, Gandhinagar below the application, dated 27.3.2000 filed by the present petitioner.

That vide impugned order the trial court has rejected the claim of the present petitioner for return of the truck bearing registration No.RJ-19-G-6883 pending further proceedings of the trial.

#. That the petitioner - Nadirkhan Mohammedkhan Pathan claimed to be the owner of the truck bearing registration No.RJ-19-G-6883 and has been dealing with in a business of transport with valid permission issued by the competent authority. As per the application of the petitioner, Unarmed Head Constable - Ganpatsinh Vadansinh Puwar intercepted the said truck near Adalaj, Kasturinagar village and found that there were about 50 calves being transported through the said truck driven by one Kasamkhan Nizamkhan. Head constable - Ganpatsinh Vadansinh Puwar seized the truck alongwith animals and registered the FIR vide CR No.38/2000 for the offence made punishable under section 11(1)(d)(e)(l) of the Prevention of Animal Cruelty Act, 1960 as well as under sections 5, 6 and 8 of the Bombay Animal Preservation Act and also under section 123 of the Motor Vehicles Act, 1988. That during the investigation the said truck was also seized as Muddamal and retained at the Police Station. While the accused were produced before the court and were released on bail.

Pending further proceedings, the owner of the truck - present petitioner moved the application in the court of 2nd Joint Judicial Magistrate, First Class, Gandhinagar for return of the said truck pending further proceedings of the said case and as stated hereinabove the court rejected the application and thereby the petitioner has challenged the same in the present proceedings.

#. It would be pertinent to note that the truck was seized as Muddamal during the investigation of the said offence under the provisions of Prevention of Animal Cruelty Act, 1960, Bombay Animal Preservation Act, 1954 and Motor Vehicles Act, 1988. None of the Acts prescribe the provision for confiscation of the vehicle if any offence as alleged in the complaint is committed.

#. That in the matter of Mohamed Sultan Abdul Rehman Kureshi Vs. State of Gujarat - Criminal Revision Application No.570/97 decided on 25.11.1997, the bench of

this court (Coram: N.N.Mathur,J) decided the proposition that the provisions of Prevention of Animal Cruelty Act, 1960 provide for disposal of animals affected by the alleged act and merely because the vehicle is used for transportation of such animals, police authority or the Magistrate cannot keep the truck as Muddamal till the end of trial.

#. In the instant case also, the said proposition applies and nothing has been shown on behalf of the respondent - State contrary to the above referred to proposition and as such it is necessary to allow the present petition on appropriate terms and conditions.

#. Learned trial court appears to have erred by holding that serious offences in respect to transportation of animal is likely to be repeated if the truck is returned to the owner and as such the application of the petitioner was rejected. The said apprehension shown by the trial court in the impugned order is without any foundation of fact.

#. On the basis of the abovesaid discussion, the following order is passed.

##. The petition is allowed. Impugned order dated 11.4.2000 passed by IInd Joint J.M.F.C. Gandhinagar below the application of the petitioner dated 27.3.2000 is hereby set aside and quashed.

The Incharge P.I. of Adalaj Police Station is directed to handover the truck bearing registration No.RJ-19-G-6883 to the petitioner by way of temporary custody on his execution of a bond of Rs.1,00,000/(Rupees one lac) and an undertaking stating that the said vehicle shall be produced either before the police authority or concerned court as and when required. The petitioner shall further state in the undertaking that the vehicle shall not be transferred, disposed of or dealt with in any manner till further orders of the court and the petitioner shall also state in the undertaking that the petitioner shall not permit the said vehicle to be used for any illegal purpose including transportation or carriage of any animal. Rule to that extent is made absolute. Direct service is permitted.

(A.K.Trivedi,J.)
(pathan)